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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,448	03/24/2004	Dwayne A. Tieszen	20804.05	3355
7590	07/01/2005			
Richard C. Litman LITMAN LAW OFFICES, LTD. P.O. Box 15035 Arlington, VA 22215			EXAMINER GUADALUPE, YARITZA	
			ART UNIT 2859	PAPER NUMBER

DATE MAILED: 07/01/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

AK

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/807,448	TIESZEN, DWAYNE A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Yaritza Guadalupe McCall	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1,3-13 and 15-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-13 and 15-20 is/are allowed.
- 6) ☒ Claim(s) 1,3 and 5-10 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

**DETAILED ACTION**

In view of telephone interview with applicant on June 27, 2005, please substitute the previous rejection with the rejection as follows

***Allowable Subject Matter***

1. The indicated allowability of claims 2 and 8 – 10 is withdrawn in view of the newly discovered reference(s) to Franklin ( US 5,123,768 ). Rejections based on the newly cited reference(s) follow.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 3, 5 – 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Swanda ( US 5,174,034 ) in view of Gibbs et al. ( US 5,806,196 ) and further in view of Franklin ( US 5,123,768 ).

In regards to claim 1, Swanda discloses a multi-axis installable and adjustable level, comprising a permanent attachment leaf ( 5, 3 ), a level display leaf ( 13 ); an omnidirectional level display ( 19 ) disposed upon said level display leaf; a plurality of coarse adjustment hinge lugs ( 15 ) adjustably interconnecting said permanent attachment leaf to said level display leaf; and a hinge bolt passing through said coarse adjustment hinge lugs and selectively locking said leaves immovably together ( See Figure 1, column 2, lines 33 - 35 ).

In regards to claim 3, Swanda also discloses a multi-axis installable and adjustable level further including an infinitesimally and omnidirectionally adjustable level display mechanism (21) disposed between said level display leaf and said omnidirectional level display.

Regarding claim 5, Swanda teaches a multi-axis installable and adjustable level wherein said omnidirectional level display is a bull's eye level.

With regards to claim 9, Swanda shows a level including a stop block ( 9,17,35 ) extending from said level display leaf.

Swanda does not disclose the plurality of attachment holes including round fastener hole and two coarse adjustment-mounting holes as stated in claims 1 and 7. Swanda does not disclose the plurality of coarse adjustment hinge lugs having a plurality of mating faces and locking teeth as stated in claim 1. Swanda does not disclose the particular materials used to make

the level being selected from metal and plastic as stated in claim 6. Swanda does not disclose the adjustable mechanical stop as stated in claim 9.

With respect to the attachment holes as stated in claims 1 and 7 : Gibbs et al. discloses an apparatus for vehicle alignment comprising a display leaf ( 22 ), and a permanent attachment leaf ( 20 ) having a plurality of round attachment holes ( 34 ) and coarse adjustment mounting holes comprising arcuate slots ( See Figure 1 ) disposed upon said fastener circle and aligned for use in bolting the apparatus to the surface of the vehicle. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add a plurality of attachment holes as taught by Gibbs et al. to the attachment leaf disclosed by Swanda in order to provide a secure attachment mechanism that will retain the tool in place during use.

Regarding claims 1 and 9 : Swanda and Gibbs et al. disclose an apparatus having a plurality of coarse adjustment hinge lugs ( 15 ) adjustably interconnecting said permanent attachment leaf to said level display leaf, but fail to disclose the mating faces and teeth. Franklin discloses a positioning device provided with coarse adjustment hinge lugs ( See Figure 1 ) including mating faces ( 28, 48 ) and a plurality of radially disposed locking teeth on each of said mating faces in order to allow said device to be selectively locked in a desired position, said mechanism also acting as an adjustable mechanical stop for stopping the angular extension of the level display leaf. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify Swanda and Gibbs et al. by adding a plurality of

mating faces and locking teeth as taught by Franklin in order to increase the versatility of the apparatus by allowing it to be selectively locked in a desired position.

With respect to claim 6 : Gibbs et al. discloses an apparatus formed of synthetic resin materials, which includes plastics, and also gives the option of using any other suitable material (See Column 3, lines 59 - 62 ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to make the tool disclosed by Swanda and Franklin of a synthetic resin such as plastic as taught by Gibbs et al. in order to provide a durable, lightweight and inexpensive material.

4. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Swanda ( US 5,174,034 ) in view of Gibbs et al. ( US 5,806,196 ) and further in view of Franklin ( US 5,123,768 ), as applied to claims 1, 3, 5 – 7 and 9 above, and further in view of Strickland ( US 6,338,203 ).

Swanda, Gibbs et al. and Franklin discloses a multi-axis installable and adjustable level as stated in paragraph 3 above.

Swanda, Gibbs et al. and Franklin does not disclose the alignment marks as stated in claim 10.

With respect to claim 10 : Strickland discloses an alignment tool comprising alignment marks ( 18, 19, 24 ) and angular alignment marks ( 66, 67 ) in order to accurately and properly position and align two surfaces. Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to add alignment marks as taught by Strickland to the display leaf of the apparatus disclosed by Swanda, Gibbs et al. and Franklin in order to accurately and properly position and align two surfaces by providing the user with a visual indication of said alignment.

5. Claims 1, 3 and 5 - 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gibbs et al. ( US 5,806,196 ) in view of Turner ( US Pub. No. 2003/0066198).

In regards to claims 1 and 7, Gibbs et al. discloses an apparatus for aligning, comprising a permanent attachment leaf ( 20 ), a level display leaf ( 22 ); a level display ( 56, 60 ) disposed upon said level display leaf ( 22 ); a plurality of coarse adjustment hinge lugs ( See Column 4, lines 10 - 15) adjustably interconnecting said permanent attachment leaf to said level display leaf ( See Figure 2 ); and a hinge bolt/pin ( 44 ) passing through said coarse adjustment hinge lugs and selectively locking said leaves immovably together, and also having a plurality of attachment holes ( 34 ) comprising round fastener holes ( See Figure 1 ) and including arcuate slots disposed upon said attachment leaf.

With respect to claim 6, Gibbs et al. discloses an apparatus formed of synthetic resin materials, which includes plastics, and also gives the option of using any other suitable material (See Column 3, lines 59 - 62 ).

Gibbs does not disclose the omnidirectional level display as stated in claims 1 and 3. Gibbs does not discloses said omnidirectional level display being a bull's eye level as stated in claim 5. Gibbs et al. does not discloses a plurality of peripheral edges depending from said level display leaf and a pair of opposed edges as stated in claim 8.

Regarding the omnidirectional level as stated in claims 1, 3 and 5 : Turner discloses a multi-purpose leveling device comprising a level display leaf (14) provided with an omnidirectional level display ( 16, 17 ) disposed upon said display leaf and further including an infinitesimally and omnidirectionally adjustable level display mechanism ( 17 ) disposed between said level display leaf and said omnidirectional level display, said omnidirectional level display being a bull's eye level ( See line 7 of paragraph [0016] ). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to replace the level disclosed by Gibbs et al. with an omnidirectional level as taught by Turner in order to increase the range on angular adjustments.



With regards to claim 8 : Gibbs et al. discloses an apparatus having an edge (32) extending from said permanent attachment leaf, and normal thereto; and a plurality of peripheral edges ( 40, 38 ) depending from said level display leaf, with one of said peripheral edges of said level display leaf contacting said edge ( 32 ) when folded together. It would have been obvious to a person having ordinary skill in the art at the time the invention was made to provide a second edge opposed said first edge extending from said permanent attachment leaf, since it has been held that the mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

*Allowable Subject Matter*

6. Claims 11 – 13 and 15 – 20 are allowed.
7. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

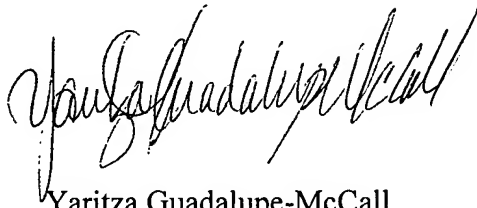
8. Applicant's arguments with respect to claims 1 and 3 – 10 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yaritza Guadalupe whose telephone number is (571)272 -2244. The examiner can normally be reached on 9:00 AM - 6:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F.F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Yaritza Guadalupe-McCall', is positioned above the printed name.

Yaritza Guadalupe-McCall  
Patent Examiner  
Art Unit 2859

YGM  
June 27, 2005